

REMARKS

Status of the Claims

Claims 22-26 are now pending in the application.

Withdrawn claims 27-32 have been cancelled without disclaimer of, or prejudice to, the subject matter therein.

Claims 22 and 23 have been amended. The amendment does not change the scope of the claims but merely clarifies the scope originally intended. The amendment is supported throughout Applicants' specification, including in the original claims.

No new matter is added.

Rejections under 35 U.S.C. § 102(d) are Traversed

1) Claims 22 and 24-26 are rejected under 35 U.S.C. §102(d) as being barred by Applicants' U.S. Pat. No. 6,913,754, "which claims priority to Great Britain application 9701897 filed January 1997." Office Action, Page 2, Item No. 3, lines 1-2 to Page 3, line 1;

2) Claims 22 and 25-26 are rejected under 35 U.S.C. §102(d) as being barred by Applicants' U.S. Pat. No. 6,627,203, "which claims priority to Great Britain application 9701897 filed January 1997." Office Action, Page 3, Item No. 4, lines 1-3; and

3) Claims 22 and 24-26 are rejected under 35 U.S.C. §102(d) as being barred by Applicants' PCT application (WO 98/33884). Office Action, Page 4, Item No. 5, lines 1-2.

To establish a statutory bar against the granting of a patent in this country under 35 U.S.C. §102(d), four conditions must be met. *See* MPEP § 706.02(e). Failure to meet any one of the four conditions negates a finding of a statutory bar under 35 U.S.C. §102(d). One of the conditions is that the foreign application [relied on as prior art under 102(d)] must have actually issued as a patent or inventor's certificate (*e.g.*, granted by sealing of the papers in Great Britain) before the filing in the United States.

Applicants point out that the effective filing date of the present application, for purposes of §102(d), is at least the July 14, 2003 filing date of the international parent. However, it does not appear that any of the applications in the family cited by the examiner issued as patents or inventor's certificates prior to that date.

For at least the foregoing reason, Applicants respectfully assert that the rejections under 35 U.S.C. § 102(d) are in error and must be withdrawn.

Rejection under 35 U.S.C. § 103(a) is Traversed

Griffiths et al. in view of Kuzyk et al.

The Examiner rejected Claims 23 and 24 as allegedly unpatentable over Griffiths *et al.* (U.S. Pat. No. 6,627,203) in view of Kuzyk *et al.* (US 2003/0165526). The Examiner states:

Although Griffiths [*et al.*] disclose the use of an immunogen, it isn't specifically disclosed that it is selected from the claimed group. Kuzyk [*et al.*] teach that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use *Piscirickettsia salmonis* antigen to vaccinate for rickettsial disease.

Office Action, Page 5, Item No. 7. Based on the foregoing amendment and following remarks, Applicants respectfully traverse the rejection.

It should be noted that "immunogen," as recited in Applicants' claims, is defined in their specification in the following passage:

The invention in one aspect provides a vaccine composition comprising live *Arthrobacter* cells and further comprising at least one other immunogen (where an "immunogen" is defined as a molecule such as an antigen capable of raising a specific immune response in a fish).

Applicants' Specification in para. [0024] of the U.S. publication.

Applicants assert that the instant rejection is in error. Neither Griffiths *et al.* nor Kuzyk *et al.* teach or suggest an immunogenic composition comprising live *Arthrobacter* spp. and at least one other immunogen as defined in Applicants' specification. The current amendment emphasizing this aspect of the claimed invention is intended to make abundantly clear the nature of the invention intended to be claimed.

For at least the foregoing reason, withdrawal of this rejection is respectfully requested.

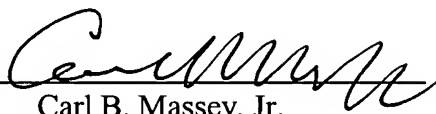
CONCLUSION

Applicants believe that all rejections have been properly traversed or rendered moot.

It is believed that all claims are in condition for immediate allowance. The Examiner is invited to contact the undersigned at (862) 778-7922 with any questions she may have concerning this submission.

Respectfully submitted,

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